

Notice of Reinstatement of the Interim Final Special Rule for the Polar Bear Talking Points

Why has the Service issued this *Federal Register* notice for the Polar Bear?

The U.S. Fish and Wildlife Service (Service) today announced a notice that codifies the November 18, 2011, court-ordered reinstatement of an interim final special rule governing management of polar bears under the Endangered Species Act (ESA). In its ruling, the court stated that the Service was required to review potential environmental impacts of its final special rule for the polar bear under the National Environmental Policy Act (NEPA), and that the May 15, 2008 (73 FR 28306), interim final special rule will be in effect until this is done.

The interim final special rule will publish in the *Federal Register* on January 30, 2012, and have an immediate effective date. It will be available online at: <http://www.regulations.gov>.

Does the interim final special rule change the status of the polar bear or polar bear critical habitat?

No. The interim final special rule does not affect the critical habitat designation for the polar bear that became effective January 6, 2011 (75 FR 76086, December 7, 2010). Moreover, this rule will not affect the status of the polar bear under State laws or suspend any other legal protections provided by State law.

Do I need any additional special permits or authorizations under the ESA in order to carry out activities that may affect polar bears or polar bear critical habitat?

No. Language in the interim final special rule is substantially similar to that which was in place prior to the court order. The reinstated interim final special rule in most instances adopts the conservation regulatory requirements of the Marine Mammal Protection Act (MMPA) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) for the polar bear as the appropriate regulatory provisions for the species. It adopts the MMPA standards for authorizing non-Federal incidental take and applies the standard ESA protections for threatened species when an activity is not covered by an MMPA or CITES authorization or exemption.

The interim final special rule provides that if an activity is authorized or exempted under the MMPA or CITES, the Service would not require any additional authorization under the Service's regulations to conduct the activity. However, if the activity is not authorized or exempted under the MMPA or CITES and the activity would result in an act that would be otherwise prohibited under the ESA (50 C.F.R. 17.31), the prohibitions of the ESA apply under section 17.31 and the Service would require authorization under ESA (50 C.F.R. 17.32). In addition, otherwise lawful activities within the United States (except for Alaska) that cause incidental take of polar bears are exempt from the provisions of the ESA under section 17.31.

The interim final special rule does not alter the Section 7 consultation requirements of the ESA. Section 7 of the ESA requires federal agencies to ensure that the activities they authorize, fund or

carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a federal action may affect a listed species or its critical habitat, the permitting or action agency must enter into consultation with the Service. This requirement remains unchanged with the interim final special rule.

Does this change polar bear conservation or management actions?

The interim final special rule is substantively similar to those protections previously in place for the polar bear.

Will the Service conduct an analysis of the special rule for the polar bear under the National Environmental Policy Act (NEPA)?

Yes. The United States District Court for the District of Columbia held that the Service was required to review potential environmental impacts of its final special rule for the polar bear under NEPA; the Service intends to meet the Court order.

Where can I learn more?

For more information on the interim final special rule and other issues on polar bear conservation, please visit <http://alaska.fws.gov/fisheries/mmm/polarbear/esa.htm>.